



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/580,979	04/09/2007	Stanley M. Lemon	265.00410101	9290
26813 7590 09/28/2010 MUEITING, RAASCH & GEBHARDT, P.A. P.O. BOX 581336 MINNEAPOLIS, MN 55458-1336				
EXAMINER				
LL BAO Q				
ART UNIT		PAPER NUMBER		
1648				
MAIL DATE		DELIVERY MODE		
09/28/2010		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary**Application No.**

10/580,979

Applicant(s)

LEMON ET AL.

Examiner

BAO LI

Art Unit

1648

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 August 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8, 14-24, 26-31, 33-35, 41-43 and 47-53 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8, 14-24, 26-31, 33-35, 41-43 and 47-53 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 8/17/2010
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Summary

Response and amendment filed on 08/18/2010 have been acknowledged and entered. Claims 1-4, 6-8, 14, 17-21, 26, 33, 4147, 48 have been amended. Claim 53 has been amended.

RCE

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(c), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(c) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 08/17/2010 has been entered.

Status of Claims

Claims 5, 9-13, 32, 36-40, 44-46, have been canceled.

Claims 1-4, 6-8, 14-24, 26-31, 33-35, 41-43, 47-53 are pending and considered.

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:
The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
2. Claims 1-5, 6-8, 14-24, 26-31, 33-35, 41-43 and 47-53 are still rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
3. In the response, Applicants submit that the independent claims have been amended to an amino acid sequence having about 95% identity to SEQ ID NO: 2, thus, a person skill in the art can readily understand that the amino acid sequence of the polypeptide recited in the claims is compared to the amino acid sequence disclosed at SEQ ID NO: 2.
4. Applicants' argument has been respectfully considered; however it is not found persuasive, because from where the numeric number of the mutated amino acid(s) need to be defined.
- 5.

6. New ground of rejection:

7. Claims 1-5, 6-8, 14-24, 26-31, 33-35, 41-43 and 47-52 are rejected under 35 U.S.C. 112, second paragraph, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

8. Claims 1, 14, 18, 24, 33 are indefinite for defining the precise position(s) for the mutation(s), because claims use a relative word "about" to define the position. Please specify the position(s) from which the mutation occurs.

9. In addition, claims 1, 18, 24, 33 are also unclear for define if the at least two mutations are included in the at least two mutations beside the S2204I or they are mutations excluded from the at least three mutations cited in claims. This rejection affects the dependent claims.

Claim Rejections - 35 USC § 112

10. The rejection of claims 1-5, 6-8, 14-24, 26-31, 33-35, 41-43 and 47-52 under 35 U.S.C. 112, first paragraph, has been removed necessitated by Applicants' amendment.

Conclusion

No claims are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to BAO LI whose telephone number is (571)272-0904. The examiner can normally be reached on 6:30 am to 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Zachariah Lucas can be reached on 571-272-0905. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Application/Control Number: 10/580,979
Art Unit: 1648

Page 4

/Bao Qun Li/

Primary Examiner, Art Unit 1648